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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. CRAIG D. JONES, Defendant and Appellant.	D073170 (Super. Ct. No. SCN372196)

APPEAL from a judgment of the Superior Court of San Diego County, David G. Brown, Judge. Affirmed and remanded with directions.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Senior Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Craig Jones of making criminal threats (Pen. Code,[1] § 422; count 1), attempting to dissuade a witness from reporting a crime (§ 136.1; count 2), corporal injury to a spouse and/or roommate (§ 273.5; count 3), and violating a protective order (§ 166, subd. (c)(1); count 4). In a bifurcated proceeding, Jones admitted the truth of allegations that he suffered two prior serious felony convictions, one of which was an Illinois conviction for robbery. The court sentenced Jones to 41 years to life in prison, consisting of 25 years to life on count 1, consecutive to 16 years on count 3 (double the three-year midterm enhanced by 10 years for the two prior serious felony convictions). The remaining sentences were imposed and stayed under section 654 (25 years to life plus 10 years on count 2) or imposed with credit for time served (464 days on count 4).

On appeal from the judgment, Jones contends the trial court erred by (1) denying his motion for acquittal under section 1118.1 on the dissuading count and (2) failing to instruct the jury sua sponte on the lesser included offense of attempted criminal threat in violation of his federal and state constitutional rights to due process. In a supplemental brief, Jones contends we must remand his case to permit the superior court to exercise its discretion to strike one or both of the prior serious felony enhancements. We agree with the latter contention and remand for that purpose.

Jones has also filed a petition for writ of habeas corpus asking this court to vacate his punishment and the court's true finding on the Illinois serious felony and strike

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1 Undesignated statutory references are to the Penal Code.

allegation. We ordered the petition to be considered with this appeal, and by separate order, we deny the petition without prejudice to Jones refiling it in the superior court.

FACTUAL AND PROCEDURAL BACKGROUND

Jones and the victim, E.B., had an 11-year on-and-off relationship, and have two children together. They were married for a period then divorced. E.B. and Jones had reconciled several months before April 2017 and for about a month had been living in a hotel together. During their relationship, Jones beat E.B. frequently and was previously arrested as a result, but E.B. would bail him out of jail.[2] He would also strangle E.B. to the point that she would pass out. Some of these incidents occurred in the months prior to April 4, 2017. Jones had also threatened E.B. that if she called the police he would hurt her, and recently told her he had friends who would kill and bury her so nobody would find her. E.B. believed Jones because he was "fucking crazy." She characterized him as threatening her "all the time" that he wanted to kill her; she also described him as a "professional choker" who knew exactly when to stop before she would die. She could not say how many times Jones had threatened to kill her since they had reconciled.[3] E.B.

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2 When asked how many times Jones beat her during the course of their relationship, E.B. testified: "There was no . . . way to even . . . know how—how many times. It's been hundreds and hundreds. Every other . . . day."

3 E.B. was asked: "How many times has . . . [Jones] threated to kill you or hurt you since you reconciled with him since your relationship started back again in February?" She answered: "I wouldn't ever know. I mean, three, four times. I can't—I—I can't tell you. I don't know."

had two restraining orders against Jones; one from a prior case and one in connection with the present case.

On April 4, 2017, days before E.B.'s birthday, Jones and E.B. got into an argument while returning to their hotel room. When they got to the hotel, E.B. remained in the car for a while, then went and knocked on the room door. She was scared because she knew Jones was going to hit her. When Jones opened the door, he grabbed E.B. by the hair and pulled her into the room, then choked her until she passed out. When E.B. awoke, she had fresh bruises and other injuries on her face. Jones was gone and E.B. called police.

Responding officers found E.B. crying, scared and fearful. E.B. described to a responding sheriff's deputy what had happened, explaining that Jones had told her in the past, "You know they're going to drop the charges and when I get out, I'll fucking kill you." According to E.B., Jones told her "all the time" that if "I don't do this, I will be dead." E.B. acknowledged she was talking about testifying against Jones.[4] E.B. testified Jones threatened to kill her "a million times," including around the time of the incident,

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4 E.B.'s testimony was as follows:

"[Prosecutor:] When the sheriff's department was talking to you that night, do you remember telling the sheriff's deputy or did you tell the sheriff's deputy that he had—he, the defendant, had told you in the past, "You know they're going to drop the charges and when I get out, I'll fucking kill you." Does that sound like—

"[E.B.:] Yes. Always.

"[Prosecutor:] Always that's what the defendant tells you?

"[E.B.:] Yeah. All the time. I mean, I—I know if I don't do this, I will be dead. I'm tired of being fucking about to die.

"[Prosecutor:] [E.B.], when you say 'do this,' are you talking about testifying against—

"[E.B.:] Yes." In context, the prosecutor was asking whether Jones had threatened to kill E.B. if E.B. did not *refuse* to testify against him.

but he did not threaten to kill E.B. on April 4, 2017. When a deputy informed E.B. that Jones was still in the parking lot and was going to be arrested for domestic violence, she began hyperventilating and pacing, and she stopped cooperating. E.B. told him she did not want Jones arrested and she was not going to go to court, because if he got arrested he would kill her.

E.B. spoke with Jones over 100 times on the telephone from prison after his arrest; police documented approximately 50 calls between April 7, 2017, and July 9, 2017. In one call, Jones said to E.B., "Please don't do this. . . . I'm going to miss my kids." In another call about ten days after the incident, E.B. told Jones she was going to tell the truth in court and Jones responded, "No. [¶] . . . [¶] No, no, no, no, no, no, no, no, no, no, no. Babe, they're tricking you. They're tricking you. Cause they want their, they're tr— oh my, are you serious?" and "What is your problem? Uh, I mean why, you know baby, deep down, I know you know if you do that, I'm fucking gone."

At trial, E.B. admitted that she did not want to cooperate with the prosecution in part because "[Jones] said that if I didn't go that you guys will have to let him go and I—I—I knew, like, I was going to die eventually." The prosecutor asked E.B. whether Jones tried to discourage her from coming to court to testify at the present trial, and she answered, "Well, he didn't say that. . . . Don't testify in front of the jury. But basically he said that in a different way." According to E.B., Jones had said something to this effect about ten times. E.B. testified that based on Jones's past threats, she was "deathly afraid of him" as she sat in court that day and she was "definitely" more afraid of him after having testified against him.

At the conclusion of the People's case in chief, Jones's counsel moved for a judgment of acquittal on the count 2 dissuading charge. Counsel argued there was no evidence that Jones either prevented or discouraged E.B. from making a report that she was a crime victim. Counsel stated that Jones only told E.B. that the charges would not be dropped and he would kill her when he got out of jail, not that he told her not to call police, or that if she called police, he would kill her. The prosecutor acknowledged that the evidence did not show that Jones threatened E.B. on April 4, 2017, but argued the complaint charged acts occurring between March 2017 and April 4, 2017, and that the evidence from E.B. was that it was common for Jones to make threats to kill her, which was discouraging or preventing her from calling the police to report their crime. He maintained it presented a question for the jury and survived the motion for acquittal. The trial court denied the motion without prejudice.

DISCUSSION

I. *The Trial Court Did Not Err by Denying Jones's Motion for Judgment of Acquittal*

Jones contends the trial court erred by denying his motion for a judgment of acquittal under section 1118.1 on the count 2 charge of attempted dissuasion of a witness. He maintains that crime applies "only where a crime has been or is being attempted at the time the defendant attempts to dissuade the victim from reporting it to law enforcement," and here, as to the events of April 4, 2017, there was no evidence E.B. had been the victim of any crime at the time of any supposed dissuasion, and she did not testify he made any threat or dissuasive remarks before, during or after the assault. Jones makes the same argument as to any pre-April 4, 2017 incidents, arguing the evidence of his

potential criminal threats "lacks specificity of the timing or actuality of any criminal threats, or other criminality, and any dissuasion relating to reporting those threats of that criminality," nor is there evidence E.B. threatened to report any of the generic pre-April 4, 2017 incidents to police or that he specifically intended to dissuade her from doing so. Jones contends there was thus no credible and solid evidence from which a reasonable trier of fact could find him guilty of count 2 beyond a reasonable doubt, and the verdict on that count must be reversed.

The People respond that substantial evidence shows Jones attempted to dissuade E.B. from reporting her victimization occurring between March 1, 2017, and the date of the incident. They point out they alleged Jones had committed his offense within this time period, not just on April 4, 2017, and the evidence shows that in repeatedly threatening to kill E.B. he sought to dissuade her from reporting his numerous beatings and other assaults that E.B. testified regularly occurred during this time frame. The People further argue they were not limited to what Jones said on the day in question in proving this offense; that an attempt to dissuade a witness from making a future report is sufficient to sustain a conviction under section 136.1, subdivision (b)(1).

"Section 1118.1 provides that in a criminal jury trial, 'the court on motion of the defendant or on its own motion, at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged . . . if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal.' " (*People v. Gomez* (2018) 6 Cal.5th 243, 307.) The purpose of such a motion " 'is to weed

out as soon as possible those few instances in which the prosecution fails to make even a prima facie case.' " (*People v. Stevens* (2007) 41 Cal.4th 182, 200.) The question for the court is whether, as of the time the motion is made, the People have presented sufficient evidence to submit the matter to the jury for its determination. (*Ibid*.)

" ' "The standard applied by a trial court in ruling upon a motion for judgment of acquittal pursuant to section 1118.1 is the same as the standard applied by an appellate court in reviewing the sufficiency of the evidence to support a conviction, that is, 'whether from the evidence, including all reasonable inferences to be drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged.' " ' " (*People v. Gomez*, *supra*, 6 Cal.5th at p. 307.) In applying this standard, we " 'review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] "Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" [Citation.] A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support' " the jury's verdict.' " (*People v. Wahidi* (2013) 222 Cal.App.4th 802, 805-806; see *People v. Penunuri* (2018) 5 Cal.5th 126, 142.) Our review of the trial court's denial of a motion

for acquittal under section 1181.1 motion is de novo. (*People v. Gomez, supra*, 6 Cal.5th at p. 307; *People v. Velazquez* (2011) 201 Cal.App.4th 219, 229.)

Section 136.1, entitled "Intimidation of witnesses and victims," criminalizes several types of acts including attempting to dissuade a victim or witness from testifying at trial or other proceedings, making a police report, or causing a complaint to be prosecuted or assisting in its prosecution. (§ 136.1, subd. (b)(1); see *People v. Torres* (2011) 198 Cal.App.4th 1131, 1137-1138; *People v. Upsher* (2007) 155 Cal.App.4th 1311, 1320.) Subdivision (b) of section 136.1 provides in part: "Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison: [¶] (1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge." "The prosecution must also establish that 'the defendant's acts or statements [were] intended to affect or influence a potential witness's or victim's testimony or acts.' [Citation.] In other words, 'section 136.1 is a specific intent crime.' " (*People v. Navarro* (2013) 212 Cal.App.4th 1336, 1347; see also *People v. Pettie* (2017) 16 Cal.App.5th 23, 68.)

On this record, there is no basis to conclude E.B. was not the victim of a crime at the time of Jones's threats, as Jones maintains. E.B. testified she had been the victim of numerous and repeated beatings and other assaults from Jones, including in the months after she and Jones reconciled and before the April 4, 2017 offense, leading up to her

birthday. She had been the subject of past threats from Jones that he would hurt her if she called police, and Jones told her "all the time" that when his charges were dropped and he got out he would "fucking kill [her]." E.B. testified that "right before" her birthday Jones had threatened to have his friends kill her so "nobody will be able to find me," and she agreed Jones's threats to "fucking kill" her were made "around the time where this happened in the hotel room." She continued: "He always says that. He's going to kill me. Like I said, he's going to have his friends and him are going to bury me and nobody's going to find me and *he'll never go to jail for killing me*." (Italics added.)

" ' "There is, of course, no talismanic requirement that a defendant must say 'Don't testify' or words tantamount thereto, in order to commit the charged offenses." ' " (*People v. Pettie, supra,* 16 Cal.App.5th at p. 54 [holding as to attempt to dissuade by express or implied threat of force or violence]; *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1344 [same].) If the words or actions support the inference that the defendant attempted to induce a person to withhold testimony, the defendant is properly convicted of the offense. (Accord, *Pettie*, at p. 54; *Mendoza,* at p. 1344.) And, proof of an attempt to prevent any future report to the police is sufficient to satisfy the statute. (*Pettie*, at p. 54, citing *People v. Wahidi*, *supra*, 222 Cal.App.4th at p. 806; *Mendoza,* at p. 1344 [defendant's comments about witness's past testimony, that she had " 'fucked up his brother's testimony,' " and he was " 'going to talk to some guys from Happy Town' " were reasonably understood as an attempt to prevent the witness from giving further damaging testimony in the future], superseded by statute on other grounds as stated in *People v. Franz* (2001) 88 Cal.App.4th 1426, 1442.) "If the defendant's actions or statements are

ambiguous, but reasonably may be interpreted as intending to achieve the future consequence of dissuading the witness from testifying, the offense has been committed." (*People v. Wahidi*, *supra*, 222 Cal.App.4th at p. 806.)

Even if there were some ambiguity in E.B.'s testimony about precisely when and how often Jones threatened her, that does not prevent us from finding sufficient evidence of attempted dissuasion so as uphold the trial court's denial of Jones's motion for acquittal. (*People v. Wahidi*, *supra*, 222 Cal.App.4th at p. 806.) Here, it is reasonable to infer that Jones's threat he would "fucking kill" E.B. when he was released from police custody which, according to E.B., Jones said "all the time," was designed and intended to deter her from talking to police or testifying about his prior assaults, or any future crime. Similarly, a reasonable trier of fact could conclude Jones's threats that his friends would "fucking kill" E.B. so that no one would find her and he would never go to jail were made with similar purpose and intent. Jones's threat about his friends was essentially the same threat couched in a different way. It was not necessary for the People to prove that E.B. actually threatened to report any of the pre-April 4, 2017 assaults to police as Jones suggests; it was sufficient that the People presented E.B.'s testimony that she previously reported Jones to police resulting in his arrest, but ultimately bailed him out and remained with him. That evidence was enough to permit an inference that in making his later threats, Jones specifically intended to prevent E.B. from repeating her past conduct in reporting him to authorities. *People v. Womack* (1995) 40 Cal.App.4th 926, cited by Jones, does not require evidence that the victim actually threaten to report the assailant to police; *Womack* held that the evidence in that case only established the defendant's intent

to kill the victim, not a dual intent to kill and also influence the victim's testimony should the attempt to kill fail. (*Womack*, at pp. 931, 933-934.)

We disagree that the evidence of the timing or fact of the threats was so lacking in specificity as to be insufficient to support the offense. Given the regularity in which Jones assaulted E.B. and threatened to hurt or kill her when he was released from police custody, the court reasonably could infer Jones's acts and threats occurred during the months, weeks, or days before April 4, 2017, during the period of time alleged by the People in the operative information. (Compare, *People v. Velazquez*, *supra*, 201 Cal.4th at pp. 230-231 [prosecution had burden to show defendant attempted to dissuade the victim on three separate days in keeping with the charges, which were not alleged as a single count encompassing numerous threats made over two or three months] with *People v. Salvato* (1991) 234 Cal.App.3d 872, 882-883 [neither election nor unanimity instruction required when the crime falls within the continuous conduct exception, and dissuasion of a witness, whose "gravamen . . . is the cumulative outcome of any number of acts, any one of which alone might not be criminal," sets forth a course of conduct crime], disapproved on other grounds in *Hoffman v. Superior Court* (2017) 16 Cal.App.5th 1086, 1095-1097.) E.B.'s fearful reaction on April 4, 2017, when becoming aware Jones was still present to see her speaking with police, and her statement that if Jones got arrested he would kill her, is consistent with such an inference and conclusion.

In sum, the evidence was sufficient to support the count alleging a violation of section 136.1, subdivision (b)(1). We therefore affirm the court's order denying Jones's motion for acquittal.

II. *Failure to Instruct the Jury on Attempted Criminal Threat*

Jones contends the trial court prejudicially erred when it failed to instruct the jury sua sponte on the lesser included offense of attempted criminal threat. He acknowledges evidence that E.B. testified he repeatedly threatened to kill or hurt her, but he maintains the threats were "part and parcel" of his relationship with E.B., and that, despite being unconditional, specific and immediate, the evidence showed E.B. was not in sustained fear, as she "made no effort to leave the relationship" even after having previously divorced and left him. According to Jones, in the absence of the lesser included offense instruction, the jury was "forced into 'an all-or-nothing choice between conviction of the stated offense on the one hand, or complete acquittal on the other,' " and if such an instruction had been given on the evidence presented, the jury would likely have been encouraged to return a verdict on the lesser included charge. Thus, he argues, the court's failure to instruct was prejudicial under either state or federal standards as he was deprived of his right to a full and complete defense and to have a jury decide each element of the offense beyond a reasonable doubt.

"As a general rule, 'a trial court errs if it fails to instruct, sua sponte, on all theories of a lesser included offense which find substantial support in the evidence.' [Citation.] But a court must instruct on such theories only when the record contains ' " 'substantial evidence' from which a rational jury could conclude that the defendant committed the lesser offense, and that he is not guilty of the greater offense." ' " (*People v. Smith* (2018) 4 Cal.5th 1134, 1163; *People v. Landry* (2016) 2 Cal.5th 52, 96.) Under this standard, a court " 'need instruct the jury on a lesser included offense only "[w]hen there is

substantial evidence that an element of the charged offense is missing, but that the accused is guilty of' the lesser offense.' " (*Landry*, at p. 96.) We review this question de novo. (*People v. Nelson* (2016) 1 Cal.5th 513, 538; *People v. Simon* (2016) 1 Cal.5th 98, 133.)

An attempted criminal threat occurs when a defendant intends to commit a criminal threat[5] " 'but is thwarted from completing the crime by some fortuity or unanticipated event.' [Citation.] 'For example, . . . if a defendant, with the requisite intent, orally makes a sufficient threat directly to the threatened person, but for some reason the threatened person does not understand the threat, an attempted criminal threat also would occur. Further, if a defendant, again acting with the requisite intent, makes a sufficient threat that is received and understood by the threatened person, but, for whatever reason, the threat does not *actually* cause the threatened person to be in sustained fear for his or her safety even though, under the circumstances, that person reasonably could have been placed in such fear, the defendant properly may be found to have committed the offense of attempted criminal threat.' [Citation.] In such situations,

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5 The elements of a criminal theft are "(1) that the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,' (2) that the defendant made the threat 'with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) that the threat . . . was 'on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,' (4) that the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances." (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228; see § 422.)

'imposing criminal liability upon the defendant for attempted criminal threat in no way will undermine the legislative purpose of prohibiting threats of the specific nature and severity of those identified in section 422.' " (*People v. Chandler* (2014) 60 Cal.4th 508, 515.)

We need not decide whether there was evidence sufficient to warrant an instruction on attempted criminal threat such that the court erred by failing to sua sponte instruct the jury on that offense. We conclude on this record any error was harmless. (See *People v. Breverman* (1998) 19 Cal.4th 142, 178 [in a noncapital case, error in failing sua sponte to instruct on lesser offenses is reviewed for prejudice exclusively under *People v. Watson* (1956) 46 Cal.2d 818, 836]; see also *People v. Earp* (1999) 20 Cal.4th 826, 886 [reviewing court need not decide whether substantial evidence supported instructions on lesser included offenses of second degree murder and involuntary manslaughter where any instructional error would necessarily be harmless].) "[E]vidence sufficient to warrant an instruction on a lesser included offense does not necessarily amount to evidence sufficient to create a reasonable probability of a different outcome had the instruction been given." (*People v. Banks* (2014) 59 Cal.4th 1113, 1161, disapproved on another point in *People v. Scott* (2015) 61 Cal.4th 363, 391, fn. 3.) Under *Watson*, the court "may consider . . . whether the evidence supporting the existing judgment is so *relatively* strong, and the evidence supporting a different outcome is so *comparatively* weak," that there is no reasonable probability the jury would have decided differently had the trial court instructed on the lesser included offense. (*People v. Breverman*, at p. 177.)

Here, Jones's sole point about the state of the evidence is that it demonstrates E.B. was not in sustained fear simply by virtue of the fact she did not leave him but elected to stay in a relationship with him. Any inference to be drawn by E.B.'s decision to stay with Jones, in our view, has little to do with whether his threats put her in fear "extend[ing] beyond what is momentary, fleeting, or transitory." (See *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349, citing *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) Such an inference is so weak as to be speculative or insubstantial, and "[s]peculative, minimal, or insubstantial evidence is insufficient to require an instruction on a lesser included offense." (*People v. Simon*, *supra*, 1 Cal.5th at p. 132.) In any event, E.B. testified that as she sat in court, she was still "deathly afraid" of Jones. And, the responding officer on the day in question testified that when he told E.B. that he had detained Jones, she started to hyperventilate and became upset and uncooperative, saying, "You can't arrest him. If you arrest him he's going to kill me." E.B.'s statements and behavior on the day in question with the responding officer demonstrated intense fear of Jones directly caused by his threats to kill her, which she believed. Though evidence of E.B.'s state of mind at the precise time of Jones's threats is indirect, this is ample circumstantial evidence from which the jury could conclude his threats to kill her or have his friends kill and bury her caused her to be in fear for a period of time that was more than just transitory or fleeting. Thus, we conclude it is not reasonably probable Jones would have obtained a more favorable outcome had the jury been instructed on attempted criminal threat. In our view, the failure to give an instruction relating to attempted criminal threats could not have been prejudicial in this case.

III. *Senate Bill No. 1393*

Jones's sentence included ten years attributable to two serious felony conviction enhancements imposed under section 667, subdivision (a)(1). At the time of his sentencing, the trial court lacked discretion to strike those enhancements. (Former § 1393, subd. (b) ["This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667"].)

Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1-2), effective January 1, 2019, amended sections 667, subdivision (a), and 1385, subdivision (b) to allow a court to exercise its discretion to strike or to dismiss a prior serious felony conviction for sentencing purposes. Senate Bill No. 1393 is "ameliorative legislation which vests trial courts with discretion, which they formerly did not have, to dismiss or strike a prior serious felony conviction for sentencing purposes." (*People v. Garcia* (2018) 28 Cal.App.5th 961, 972.) Thus, it applies retroactively to all cases not final when it took effect (*Garcia*, at p. 973), such as this case. This conclusion disposes of the People's ripeness arguments. That doctrine is not at issue.[6]

Based on this new law, we will vacate Jones's sentence and remand the matter for the trial court to conduct further proceedings consistent with this opinion and our order denying without prejudice Jones's petition for writ of habeas corpus.

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6 Because ripeness is not at issue, we deny Jones's request that we take judicial notice of the California Supreme Court dockets in two cases, as that information is not necessary for the disposition of this appeal.

DISPOSITION

The judgment of conviction is affirmed. Jones's sentence is vacated and the matter is remanded for the trial court to address Jones's prior conviction allegations, including by exercising its discretion to either strike or dismiss those convictions.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

GUERRERO, J.